

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 87 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

M S DAVE,

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Appearance:

MR MANISH R BHATT for Petitioner

NOTICE UNSERVED for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE KUNDAN SINGH

Date of decision: 27/04/98

ORAL JUDGEMENT (per R.K. Ahichandani, J)

The Income Tax Appellate Tribunal has referred the following question which pertains for the assessment year 1988-89, for the opinion of this Court under Section 256(1) of the Income Tax Act.:

"Whether, the Appellate Tribunal is right in law and on facts in directing the ITO to allow deduction of 40% of the incentive bonus as expenses incurred for earning the incentive bonus which was disallowed by the ITO on the ground that incentive bonus was part of salary?"

Identical question came up for our consideration in ITR No.54/93 and other cognate matters with which the entire group was argued and for the reasons given by us in our judgement dated 27.4.1998, we hold that the Tribunal was right in holding that the assessee was entitled for deduction of the incentive bonus as expenses out of the amount of incentive bonus received by the assessee - Development Officer from the Life Insurance Corporation, but only to the extent of reimbursement of expenses actually incurred upto the maximum limit of 30 per cent of the incentive bonus earned by the assessee. The question referred to us is accordingly answered in the affirmative against the Revenue and in favour of the assessee.

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